

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

KEVIN LAMAR PORTER,

Plaintiff,

v.

AMEZCUA, *et al.*,

Defendants.

Case No. 1:23-cv-01491-JLT-BAM (PC)

ORDER GRANTING *EX PARTE* SPECIAL  
APPEARANCE TO REQUEST AN  
EXTENSION OF TIME TO FILE WAIVER  
OF SERVICE FOR DEFENDANTS

(ECF No. 36)

**Waivers of Service of Process Due: January  
2, 2025**

Plaintiff Esmeling L. Bahena (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s second amended complaint against: (1) Defendant Amezcua for retaliation in violation of the First Amendment and a related state law claim for violation of the Bane Act; (2) Defendant Amezcua for excessive force in violation of the Eighth Amendment and related state law claims for battery and violation of the Bane Act for slamming Plaintiff on the ground; (3) Defendants Amezcua, Chao, and John Does 1–5 for excessive force in violation of the Eighth Amendment and related state law claims for battery and violation of the Bane Act for forcefully moving Plaintiff despite his complaints of severe pain; and (4) Defendants Amezcua, Chao, John Does 1–5, and Jane Does 1–2 for deliberate indifference to medical care in violation of the Eighth Amendment and a related claim for violation of the Bane Act.

On November 4, 2024, the Court ordered electronic service on Defendants Amezcua and Chao<sup>1</sup> and directed the California Department of Corrections and Rehabilitation (“CDCR”) to file

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<sup>1</sup> By separate order, the Court directed Plaintiff to provide written notice identifying Defendants John Doe 1–5 and Jane Doe 1–2 for service of process within ninety days. (ECF No. 32.)

1 a Notice of E-Service Waiver advising the Court which defendant(s) would be waiving service of  
2 process without the need for personal service. (ECF No. 33.) That order also required the  
3 California Office of the Attorney General (“OAG”) to file, within 30 days from the filing of the  
4 Notice of E-Service Waiver, a separate waiver of service of process for any defendant waiving  
5 service under Federal Rule of Civil Procedure 4(d)(1). (*Id.*) CDCR returned the Notice of E-  
6 Service Waiver indicating that Defendants Amezcua and Chao intend to waive service on  
7 November 4, 2024. (ECF No. 35.) Therefore, waivers of service of process from the OAG for  
8 Defendants Amezcua and Chao are due on or before December 4, 2024.

9 On December 2, 2024, counsel for the OAG, by special appearance, filed a motion  
10 requesting a twenty-eight-day extension of time to file a waiver of service of process for  
11 Defendants Amezcua and Chao. (ECF No. 36.) Counsel from the OAG states that the extension  
12 is necessary to determine whether the OAG will be representing Defendants in this case. Until  
13 that determination is made, the OAG is unable to file a waiver of service of process on behalf of  
14 Defendants. Counsel expects a twenty-eight-day extension, up to and including January 1, 2025,  
15 will allow enough time to determine whether the OAG will be representing Defendants. (*Id.*)

16 Having considered the request, the Court finds that there is good cause to grant an  
17 extension of time for Defendants Amezcua and Chao to file waivers of service of process. Fed.  
18 R. Civ. P. 6(b). As January 1, 2025 is a court holiday, the deadline will be extended to January 2,  
19 2025. The Court further finds that Plaintiff will not be prejudiced by the brief extension.

20 Accordingly, the motion for an extension of time, (ECF No. 36), is HEREBY GRANTED.  
21 Defendants Amezcua and Chao shall file waivers of service of process on or before **January 2,**  
22 **2025.**

23  
24 IT IS SO ORDERED.

25 Dated: December 3, 2024

26 /s/ Barbara A. McAuliffe  
27 UNITED STATES MAGISTRATE JUDGE  
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